

BEFORE THE COMMISSIONER OF INSURANCE
OF THE STATE OF WASHINGTON

In the Matter of

No. G02-45

THE APPLICATION REGARDING
THE CONVERSION AND
ACQUISITION OF CONTROL OF
PREMERA BLUE CROSS AND ITS
AFFILIATES

THIRD JOINT STATUS REPORT OF
OIC STAFF AND PREMERA BLUE
CROSS AND ITS AFFILIATES

1. On October 10, 2003, the OIC Staff and Premera Blue Cross and its Affiliates ("Premera") asked that they be allowed to submit a joint status report on October 17, 2003 to set forth their position on the question of when the public versions of the executive summaries and the final reports by the OIC Staff's consultants should be required to be produced. On October 17, 2003, Premera requested an extension of time for this submission, which was granted. The OIC Staff and Premera hereby submit their Third Joint Status Report.

2. On October 15, 2003, pursuant to the Commissioner's Thirteenth Order, Premera delivered to the OIC Staff (a) its recommended redactions of confidential and proprietary information in the OIC Staff's consultants' draft reports and executive summaries and (b) its suggested amendments to the draft reports and executive summaries to address alleged factual errors. Both submissions were extensive.¹

3. Promptly upon receipt, the OIC Staff transmitted electronically Premera's list of alleged factual errors and suggested amendments to the OIC Staff's consultants. The OIC

¹ Premera proposed redactions of material on 51% (or 398) of the total 786 pages of draft reports and executive summaries. With respect to the executive summaries only, Premera recommended redaction of material on 39 out of 62 pages, or 63%. Premera submitted 70 pages of material to the OIC Staff identifying alleged factual errors and suggesting amendments to the draft reports.

1 Staff also forwarded, for next-day delivery to the consultants, copies of Premera's
2 recommended redactions. The OIC Staff's consultants are now attending to these matters.

3 4. The OIC Staff's preliminary review of Premera's recommended redactions reveals
4 that there is substantial disagreement between the parties regarding the redactions. The OIC
5 Staff will continue its review of Premera's recommendations with the objective of identifying
6 areas of disagreement and communicating them to Premera as soon as possible. The OIC
7 Staff will rely upon the assistance of the consultants in this task, but the OIC Staff expects that
8 the consultants will be focused more upon reviewing Premera's suggested amendments to the
9 draft reports to address alleged factual errors and participating in discussions with Premera as
10 described in paragraph 6 below. Thus, the OIC Staff expects to receive limited, if any,
11 assistance from the consultants in the redactions review process prior to October 27th.

12 5. In addition, the parties will be prevented from reaching definitive determinations
13 with respect to any disputes relating to Premera's recommendations until the final reports
14 themselves are completed and then delivered to Premera for review and preparation of
15 recommended redactions.

16 6. There will likely be significant differences between the draft and final consultant
17 reports. In response to concerns about certain provisions of the Form A transaction
18 documents raised in the consultants' draft reports, early during the week of October 6th
19 Premera communicated its willingness to meet with the OIC Staff and the consultants to
20 attempt to address those concerns.² If discussions between Premera and the OIC Staff and its
21 consultants are productive, additional changes to the consultants' final reports and executive
22 summaries may be necessary.

23
24 ² The OIC Staff interpreted Premera's statement of interest as potentially leading to an amendment of the
25 Form A Statement. As Premera stated at the conference on October 8, 2003, it does not propose to amend its
26 Form A. Premera and the OIC Staff disagree about the nature of such discussions, and that issue is reserved for
future resolution. Regardless, Premera and the OIC Staff both foresee that the outcome of the discussions could
impact the schedule for resolving redaction issues and releasing materials to the public.

1 7. Premera and the OIC Staff believe that the process for identifying and resolving
2 disputes relating to redactions will necessitate significant allotments of time. Specifically,
3 after October 27th, Premera will require time to review the final reports (including the final
4 executive summaries) and recommend redactions. Thereafter, the OIC Staff will require time
5 to review the recommended redactions and identify areas of dispute. The parties then will
6 require time to resolve any dispute and, if that is not entirely successful, disputes could be
7 submitted to the Special Master for resolution. If the Special Master becomes involved in the
8 process, additional time will be required for preparing submissions to him as well as for him
9 to review the submissions and issue a determination.

10 8. In the Sixteenth Order, the Commissioner expressed his intention that the main
11 body of the final reports be made fully disclosable to the public to the greatest extent possible
12 in time for review by the public prior to the public hearings scheduled in December.³ When
13 the OIC Staff entered into personal service contracts with the consultants, requiring
14 preparation and submission of executive summaries in addition to full reports, the OIC Staff
15 expected and intended that the executive summaries would be public documents. The OIC
16 Staff also anticipated that, when the final round of public hearings was held, only the
17 executive summaries would be made available to the public for review and comment; public
18 versions of the final reports would be made available at the time of the commencement of the
19 adjudicative hearing. The OIC Staff interpreted the Sixteenth Order to be generally consistent
20 with the OIC Staff's original intent, except that the Commissioner clearly desired to accelerate
21 the date for publication of the final reports.

22 ³ If this intention is to be given effect, redacted (public) versions of the final reports must be placed on
23 the OIC web site sufficiently in advance to permit meaningful public review. Staff of the Public Affairs Division
24 of the OIC has informed the OIC Staff that, in light of the Thanksgiving holiday and the volume of the reports, the
25 last day for submission of the public version of the reports for posting to the web site allowing sufficient time for
26 public review is November 14, 2003. Premera and the OIC Staff believe that meeting a November 14th deadline
for release of public versions of the final reports is problematic if not impossible due to the size of the reports and
the process required to identify and resolve potential disputes relating to redactions.

1 9. For the reasons set forth above, Premera and the OIC Staff request that public
2 (redacted) versions of the executive summaries be submitted by November 14th and that
3 public (redacted) versions of the full reports be made available to the public immediately prior
4 to or at the time of the adjudicative hearing scheduled in this matter.

5 10. In the alternative, Premera and the OIC Staff request that, if the Commissioner
6 requires redacted versions of the final reports to be made accessible to the public prior to the
7 date of the first public hearing (December 2), the deadline for submission be November 21st.
8 Despite the difficulties that it presents, the parties will make every effort to comply with this
9 deadline.

10 DATED this 20th day of October, 2003.

11 Respectfully submitted,

12 PRESTON GATES & ELLIS LLP

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19 and

20 OFFICE OF INSURANCE COMMISSIONER
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